

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

DAMON ELLIOTT

§

VS.

§

CIVIL ACTION NO. 1:09cv763

D. HILL

§

MEMORANDUM OPINION

Plaintiff Damon Elliott, an inmate confined at the Jefferson County Jail, proceeding *pro se*, filed this civil rights lawsuit. Plaintiff alleges that on October 30, 2007, while he was incarcerated at the United States Penitentiary in Beaumont, Texas, the defendant used excessive force against him. Plaintiff has filed a motion seeking leave to proceed *in forma pauperis* in this action.

Analysis

Title 28 U.S.C. § 1915(g) prohibits prisoners from repeatedly filing frivolous or malicious complaints on an *in forma pauperis* basis. Section 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action [*in forma pauperis*] ... if the prisoner has, on three or more occasions ... brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

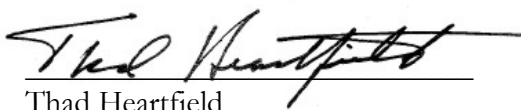
Prior to the date on which he filed this lawsuit, at least three lawsuits filed by plaintiff were dismissed as frivolous or for failure to state a claim.¹ As a result, Section 1915(g) is applicable.

As set forth above, plaintiff has had at least three prior lawsuits dismissed as frivolous or for failure to state a claim. The allegations set forth in plaintiff's complaint do not demonstrate that he is in "imminent danger of serious physical injury." Section 1915(g) therefore bars plaintiff from proceeding further with a civil rights lawsuit on an *in forma pauperis* basis.

Conclusion

For the reasons set forth above, this lawsuit will be dismissed. An appropriate Final Judgment shall be entered.

SIGNED this the 2 day of **October, 2009**.


Thad Heartfield
United States District Judge

¹ *Elliott v. Masri*, 1:97cv3480 (D. Md. Oct. 28, 1997) (dismissed as frivolous); *Elliott v. United States Department of Justice*, 1:07cv480 (N.D. Ga. Mar. 13, 2007 (dismissed as frivolous); *Elliot v. Sunderman*, 1:06cv1372 (N.D. Ga. Nov. 29, 2007) (dismissed for failure to state a claim).